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Senate Engrossed

unjustified actions; parental rights

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1005

AN ACT

AMENDING SECTION 1-602, ARIZONA REVISED STATUTES; RELATING TO PARENTS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

S.B. 1005

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 1-602, Arizona Revised Statutes, is amended to read:

1-602. Parents' bill of rights; governmental interference restricted; burden of proof; definition

A. All parental rights are exclusively reserved to a parent of a minor child without obstruction or interference from this state, any political subdivision of this state, any other governmental entity or any other institution, including:

1. The right to direct the education of the minor child.

2. All rights of parents identified in title 15, including the right to access and review all records relating to the minor child.

3. The right to direct the upbringing of the minor child.

4. The right to direct the moral or religious training of the minor child.

5. The right to make all health care decisions for the minor child, including rights pursuant to sections 15-873, 36-2271 and 36-2272, unless otherwise prohibited by law.

6. The right to request, access and review all written and electronic medical records of the minor child unless otherwise prohibited by law or unless the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement official requests that the information not be released.

7. The right to consent in writing before a biometric scan of the minor child is made pursuant to section 15-109.

8. The right to consent in writing before any record of the minor child's blood or deoxyribonucleic acid is created, stored or shared, except as required by section 36-694, or before any genetic testing is conducted on the minor child pursuant to section 12-2803 unless authorized pursuant to section 13-610 or a court order.

9. The right to consent in writing before this state or any of its political subdivisions makes a video or voice recording of the minor child, unless the video or voice recording is made during or as a part of a court proceeding, by law enforcement officers during or as part of a law enforcement investigation, during or as part of an interview in a criminal or child safety services investigation or to be used solely for any of the following:

(a) Safety demonstrations, including the maintenance of order and discipline in the common areas of a school or on pupil transportation vehicles.

(b) A purpose related to a legitimate academic or extracurricular activity.

(c) A purpose related to regular classroom instruction.

(d) Security or surveillance of buildings or grounds.

(e) A photo identification card.

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1 10. The right to be notified promptly if an employee of this state,
2 any political subdivision of this state, any other governmental entity or
3 any other institution suspects that a criminal offense has been committed
4 against the minor child by someone other than a parent, unless the
5 incident has first been reported to law enforcement and notifying the
6 parent would impede a law enforcement or child safety services
7 investigation. This paragraph does not create any new obligation for
8 school districts and charter schools to report misconduct between students
9 at school, such as fighting or aggressive play, that is routinely
10 addressed as a student disciplinary matter by the school.

11 11. The right to obtain information about a child safety services
12 investigation involving the parent pursuant to section 8-807.

13 B. This section does not authorize or allow a parent to engage in
14 conduct that is unlawful or to abuse or neglect a child in violation of
15 the laws of this state. This section does not prohibit courts, law
16 enforcement officers or employees of a government agency responsible for
17 child welfare from acting in their official capacity within the scope of
18 their authority. This section does not prohibit a court from issuing an
19 order that is otherwise allowed by law.

20 C. Any attempt to encourage or coerce a minor child to withhold
21 information from the child's parent is grounds for discipline of an
22 employee of this state, any political subdivision of this state, any other
23 governmental entity or any other institution, except for law enforcement
24 personnel.

25 D. Unless those rights have been legally waived or legally
26 terminated, parents have inalienable rights that are more comprehensive
27 than those listed in this section. This chapter does not prescribe all
28 rights of parents or preempt or foreclose claims or remedies in support of
29 parental rights that are available under the constitution, statutes or
30 common law of this state. Unless otherwise required by law, the rights of
31 parents of minor children shall not be limited or denied.

32 E. Except as prescribed in subsections F and G of this section,
33 this state, a political subdivision of this state or any other
34 governmental entity, or any official of this state, a political
35 subdivision of this state or any other governmental entity acting under
36 color of law, shall not interfere with or usurp the fundamental right of
37 parents to direct the upbringing, education, health care and mental health
38 of their children. A parent may bring suit against a governmental entity
39 or official described in this subsection based on any violation of the
40 statutory rights set forth in this chapter or any other action that
41 interferes with or usurps the fundamental right of parents to direct the
42 upbringing, education, health care and mental health of their children in
43 the superior court in the county in which the violation or other action
44 occurs or in federal court, if authorized by federal law, or before an

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1 administrative tribunal of appropriate jurisdiction. A parent may raise a
2 violation of this chapter as a claim or a defense.

3 F. In any action under subsection E of this section, the
4 governmental entity or official described in subsection E of this section
5 has the burden of proof to demonstrate both of the following:

6 1. That the interference or usurpation is essential to accomplish a
7 compelling government interest of the highest order, as long recognized in
8 the history and traditions of this state in the operation of its
9 regulatory powers.

10 2. That the method of interference or usurpation used by the
11 government is narrowly tailored and is not otherwise served by a less
12 restrictive means.

13 G. A governmental entity or official described in subsection E of
14 this section may interfere with or usurp the fundamental right of parents
15 to direct the upbringing, education, health care and mental health of
16 their children only if the governmental entity or official successfully
17 demonstrates both elements described in subsection F of this section. If
18 the governmental entity or official is unsuccessful, the court shall grant
19 appropriate relief, such as declaratory or injunctive relief, compensatory
20 damages and attorney fees, based on the facts of the case and the law as
21 applied to the facts. EXCEPT AS PROVIDED BY SECTION 12-349, THE COURT MAY
22 NOT GRANT ATTORNEY FEES, EXPENSES OR DAMAGES TO A GOVERNMENTAL ENTITY OR
23 OFFICIAL FOR A CLAIM OR DEFENSE ASSERTED UNDER SUBSECTION E OF THIS
24 SECTION.

25 H. For the purposes of this section, "parent" means the natural or
26 adoptive parent or legal guardian of a minor child.

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House Engrossed Senate Bill

recorded documents; property; notification

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Senate
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First Regular Session
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CHAPTER 64
SENATE BILL 1110

AN ACT

AMENDING TITLE 11, CHAPTER 3, ARTICLE 3, ARIZONA REVISED STATUTES, BY
ADDING SECTION 11-467; RELATING TO COUNTY RECORDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

S.B. 1110

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 11, chapter 3, article 3, Arizona Revised
3 Statutes, is amended by adding section 11-467, to read:
4 11-467. Recorded documents; notice to named party
5 NOT LATER THAN JANUARY 1, 2025, THE RECORDER SHALL PROVIDE A SYSTEM
6 FOR NOTIFYING A PERSON OR ENTITY WHEN ANY DOCUMENT IS RECORDED IN WHICH
7 THE PERSON OR ENTITY IS A NAMED PARTY TO THE INSTRUMENT. THE SYSTEM SHALL
8 ALLOW A PERSON OR ENTITY TO CHOOSE TO PARTICIPATE AND IS VOLUNTARY FOR THE
9 PERSON OR ENTITY, AND THE NOTICE SHALL BE PROVIDED PROMPTLY BY EMAIL, TEXT
10 MESSAGE OR OTHER SIMILAR MEANS.

APPROVED BY THE GOVERNOR APRIL 18, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2023.

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House Engrossed Senate Bill

attorney general; legislature; legal challenges

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First Regular Session
2023

SENATE BILL 1021

AN ACT

AMENDING SECTIONS 12-1841 AND 41-192, ARIZONA REVISED STATUTES; RELATING TO COURTS AND CIVIL PROCEEDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1841, Arizona Revised Statutes, is amended to
3 read:

4 12-1841. Parties: notice of claim of unconstitutionality

5 A. When declaratory relief is sought, all persons shall be made
6 parties who have or claim any interest which THAT would be affected by the
7 declaration, and no declaration shall prejudice the rights of persons not
8 parties to the proceeding. In any proceeding that involves the validity
9 of a municipal ordinance or franchise, such THE municipality shall be made
10 a party and shall be entitled to be heard. In any proceeding in which a
11 state statute, ordinance, franchise or rule is alleged to be
12 unconstitutional, the attorney general, and the speaker of the house of
13 representatives and the president of the senate shall be served with a
14 copy of the pleading, motion or document containing the allegation at the
15 same time the other parties in the action are served and shall be entitled
16 to be heard.

17 B. If a pleading, motion or document containing the allegation is
18 served on the attorney general, and the speaker of the house of
19 representatives and the president of the senate pursuant to subsection A
20 OF THIS SECTION, a notice of claim of unconstitutionality shall be
21 attached to the pleading, motion or document as the cover page and shall
22 state the following information:

23 1. The name, address and telephone number of the attorney for the
24 party alleging that a state law is unconstitutional or the name, address
25 and telephone number of the party if the party is not represented by an
26 attorney.

27 2. The case name, court name, caption and case number of the
28 proceeding.

29 3. A brief statement of the basis for the claim of
30 unconstitutionality.

31 4. A brief description of the proceeding, with copies of any court
32 orders in the proceeding if the claim of unconstitutionality is asserted
33 in a pleading, motion or document other than the pleading, motion or
34 document that initiated the proceeding.

35 5. The date, time, location, judge and subject of the next hearing
36 in the proceeding, if any.

37 C. IF A COURT ORDER REQUESTS THE PARTIES IN A PROCEEDING TO ADDRESS
38 THE CONSTITUTIONALITY OF A STATE STATUTE AND NO PARTY HAS ALLEGED IN THE
39 PROCEEDING THAT THE STATE STATUTE IS UNCONSTITUTIONAL, THE CLERK OF THE
40 COURT SHALL PROVIDE PROMPT NOTICE OF THE COURT'S ORDER TO THE SPEAKER OF
41 THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE.

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1 C. D. If the attorney general or the speaker of the house of
2 representatives and the president of the senate are not served in a timely
3 manner with notice pursuant to subsection A THIS SECTION, on motion by the
4 attorney general, the speaker of the house of representatives or the
5 president of the senate the court shall vacate any finding of
6 unconstitutionality and shall give the attorney general, the speaker of
7 the house of representatives or the president of the senate a reasonable
8 opportunity to prepare and be heard.

9 D. E. This section ~~shall~~ DOES not be construed to compel the
10 attorney general, the speaker of the house of representatives or the
11 president of the senate to intervene as a party in any proceeding or to
12 permit ALLOW them to be named as defendants in a proceeding. The attorney
13 general, the speaker of the house of representatives or the president of
14 the senate, in the party's discretion, may intervene as a party, may file
15 briefs in the matter or may choose not to participate in a proceeding that
16 is subject to the notice requirements of this section.

17 Sec. 2. Section 41-192, Arizona Revised Statutes, is amended to
18 read:

19 41-192. Powers and duties of attorney general; restrictions
20 on state agencies as to legal counsel; exceptions;
21 compromise and settlement monies

22 A. The attorney general shall have charge of and direct the
23 department of law and shall serve as chief legal officer of the state.
24 The attorney general shall:

25 1. Be the legal advisor of the departments of this state and render
26 such legal services as the departments require.

27 2. Establish administrative and operational policies and procedures
28 within ~~this~~ THE department.

29 3. Approve long-range plans for developing departmental programs
30 ~~therein~~, and coordinate the legal services required by other departments
31 of this state or other state agencies.

32 4. Represent school districts and governing boards of school
33 districts in any lawsuit involving a conflict of interest with other
34 county offices.

35 5. Represent political subdivisions, school districts and
36 municipalities in suits to enforce state or federal statutes pertaining to
37 antitrust, restraint of trade or price-fixing activities or conspiracies,
38 if the attorney general notifies in writing the political subdivisions,
39 school districts and municipalities of the attorney general's intention to
40 bring any such action on their behalf. At any time within thirty days
41 after the notification, a political subdivision, school district or
42 municipality, by formal resolution of its governing body, may withdraw the
43 authority of the attorney general to bring the intended action on its
44 behalf.

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1 6. DEFEND THE CONSTITUTIONALITY OF ANY LAW PASSED BY THE
2 LEGISLATURE AND SIGNED BY THE GOVERNOR IN ANY LEGAL PROCEEDING. THE
3 ATTORNEY GENERAL SHALL BE RELIEVED FROM THIS DUTY BY PROVIDING NOTICE TO
4 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE
5 SENATE STATING THAT THE ATTORNEY GENERAL DOES NOT INTEND TO DEFEND THE LAW
6 AT LEAST TEN DAYS BEFORE FILING ANY SUBSTANTIVE OR DISPOSITIVE PLEADING
7 REGARDING THE CONSTITUTIONALITY OF THE CHALLENGED LAW.

8 7. Organize the civil rights division within the department of law
9 and administer such THE division pursuant to the powers and duties
10 provided in chapter 9 of this title.

11 8. Compile, publish and distribute to all state agencies,
12 departments, boards, commissions and councils, and to other persons and
13 government entities on request, at least every ten years, the Arizona
14 agency handbook that sets forth and explains the major state laws that
15 govern state agencies, including information on the laws relating to
16 bribery, conflicts of interest, contracting with the government,
17 disclosure of public information, discrimination, nepotism, financial
18 disclosure, gifts and extra compensation, incompatible employment,
19 political activity by employees, public access and misuse of public
20 resources for personal gain. A supplement to the handbook reflecting
21 revisions to the information contained in the handbook shall be compiled
22 and distributed by the attorney general as deemed necessary.

23 B. Except as otherwise provided by law, the attorney general may:

24 1. Organize the department into such bureaus, subdivisions or units
25 as he deems most efficient and economical, and consolidate or abolish
26 them.

27 2. Adopt rules for the orderly conduct of the business of the
28 department.

29 3. Subject to chapter 4, article 4 of this title, employ and assign
30 assistant attorneys general and other employees necessary to perform the
31 functions of the department.

32 4. Compromise or settle any action or claim by or against this
33 state or any department, board or agency of this state. If the compromise
34 or settlement involves a particular department, board or agency of this
35 state, the compromise or settlement shall be first approved by the
36 department, board or agency. If no A department or agency is NOT named or
37 otherwise materially involved, the approval of the governor shall be first
38 obtained.

39 5. Charge reasonable fees for distributing official publications,
40 including attorney general legal opinions and the Arizona agency handbook.
41 The fees received shall be transmitted to the state treasurer for deposit
42 in the state general fund.

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1 C. The powers and duties of a bureau, subdivision or unit shall be
2 limited to those assigned by law to the department.

3 D. Notwithstanding any law to the contrary, except as provided in
4 subsections E and F of this section, no state agency other than the
5 attorney general shall employ legal counsel or make an expenditure or
6 incur an indebtedness for legal services, but the following are exempt
7 from this section:

- 8 1. The director of water resources.
- 9 2. The residential utility consumer office.
- 10 3. The industrial commission.
- 11 4. The Arizona board of regents.
- 12 5. The auditor general.
- 13 6. The corporation commissioners and the corporation commission
14 other than the securities division.
- 15 7. The office of the governor.
- 16 8. The constitutional defense council.
- 17 9. The office of the state treasurer.
- 18 10. The Arizona commerce authority.
- 19 11. The water infrastructure finance authority of Arizona.

20 E. If the attorney general determines that he is disqualified from
21 providing judicial or quasi-judicial legal representation or legal
22 services on behalf of any state agency in relation to any matter, the
23 attorney general shall give written notification to the state agency
24 affected. If the agency has received written notification from the
25 attorney general that the attorney general is disqualified from providing
26 judicial or quasi-judicial legal representation or legal services in
27 relation to any particular matter, the state agency is authorized to make
28 expenditures and incur indebtedness to employ attorneys to provide the
29 representation or services.

30 F. If the attorney general and the director of the department of
31 agriculture cannot agree on the final disposition of a pesticide complaint
32 under section 3-368, if the attorney general and the director determine
33 that a conflict of interest exists as to any matter or if the attorney
34 general and the director determine that the attorney general does not have
35 the expertise or attorneys available to handle a matter, the director is
36 authorized to make expenditures and incur indebtedness to employ attorneys
37 to provide representation or services to the department with regard to
38 that matter.

39 G. In any action brought by the attorney general pursuant to
40 state or federal statutes pertaining to antitrust, restraint of trade, or
41 price-fixing activities or conspiracies for the recovery of damages by
42 this state or any of its political subdivisions, school districts or
43 municipalities, in addition to the attorney general's other powers and
44 authority, the attorney general on behalf of this state may enter into

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1 contracts relating to the investigation and prosecution of such action
2 with any other party plaintiff who has brought a similar action for the
3 recovery of damages and with whom the attorney general finds it
4 advantageous to act jointly or to share common expenses or to cooperate in
5 any manner relative to such action. In any such action, notwithstanding
6 any other laws LAW to the contrary, the attorney general may undertake,
7 among other things, to render legal services as special counsel or to
8 obtain the legal services of special counsel from any department or agency
9 of the United States, of this state or any other state or any department
10 or agency thereof or any county, city, public corporation or public
11 district in this state or in any other state that has brought or intends
12 to bring a similar action for the recovery of damages or its duly
13 authorized legal representatives in such action.

14 G. H. Any department or agency of this state authorized by law to
15 maintain a legal division or incur expenses for legal services from funds
16 derived from sources other than the general revenue of the state, or from
17 any special or trust fund, shall pay from such source of revenue or
18 special or trust fund into the general fund of the THIS state, to the
19 extent such funds are available and on a reimbursable basis for warrants
20 drawn, the amount actually expended by the department of law within
21 legislative appropriations for such legal division or legal services.

22 H. I. Appropriations made pursuant to subsection G-H of this
23 section ~~shall~~ ARE not be subject to lapsing provisions otherwise provided
24 by law. Services for departments or agencies to which this subsection and
25 subsection F of this section ~~are applicable~~ APPLY shall be performed by
26 special or regular assistants to the attorney general.

27 I. J. Notwithstanding section 35-148, monies received by the
28 attorney general from charges to state agencies and political subdivisions
29 for legal services relating to interagency service agreements shall be
30 deposited, pursuant to sections 35-146 and 35-147, in an attorney general
31 agency services fund. Monies in the fund are subject to legislative
32 appropriation and are exempt from the provisions of section 35-190
33 relating to lapsing of appropriations.

34 J. K. Unless otherwise provided by law, monies received for and
35 belonging to the state and resulting from compromises and settlements
36 entered into pursuant to subsection B of this section, excluding
37 restitution and reimbursement to state agencies for costs or attorney
38 fees, shall be deposited into the state treasury and credited to the state
39 general fund pursuant to section 35-142. Monies received for and
40 belonging to the state and resulting from a compromise or settlement are
41 not considered custodial, private or quasi-private monies unless
42 specifically provided by law. On or before January 15, April 15, July 15
43 and October 15, the attorney general shall file with the governor, with
44 copies to the director of the department of administration, the president

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1 of the senate, the speaker of the house of representatives, the secretary
2 of state and the staff director of the joint legislative budget committee,
3 a full and complete account of the deposits into the state treasury made
4 pursuant to this subsection in the previous calendar quarter. For the
5 purposes of this subsection, "restitution" means monies intended to
6 compensate a specific, identifiable person, including this state, for
7 economic loss.

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Senate Engrossed

jails; mental health; evaluations; treatment

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

CHAPTER 91

SENATE BILL 1077

AN ACT

AMENDING SECTION 36-501, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

S.B. 1077

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-501, Arizona Revised Statutes, is amended to
3 read:

4 36-501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Administration" means the Arizona health care cost containment
7 system administration.

8 2. "Admitting officer" means a psychiatrist or other physician or
9 psychiatric and mental health nurse practitioner with experience in
10 performing psychiatric examinations who has been designated as an
11 admitting officer of the evaluation agency by the person in charge of the
12 evaluation agency.

13 3. "Authorized transporter" means a transportation entity that is
14 contracted with a city, town or county to provide services pursuant to
15 this chapter and that is either:

16 (a) An ambulance service that holds a valid certificate of
17 necessity.

18 (b) A transportation provider authorized by this state to provide
19 safe behavioral health transportation for individuals requiring
20 transportation pursuant to this chapter.

21 4. "Chief medical officer" means the chief medical officer under
22 the supervision of the superintendent of the state hospital.

23 5. "Contraindicated" means that access is reasonably likely to
24 endanger the life or physical safety of the patient or another person.

25 6. "Court" means the superior court in the county in this state in
26 which the patient resides or was found before screening or emergency
27 admission under this title.

28 7. "Criminal history" means police reports, lists of prior arrests
29 and convictions, criminal case pleadings and court orders, including a
30 determination that the person has been found incompetent to stand trial
31 pursuant to section 13-4510.

32 8. "Danger to others" means that the judgment of a person who has a
33 mental disorder is so impaired that the person is unable to understand the
34 person's need for treatment and as a result of the person's mental
35 disorder the person's continued behavior can reasonably be expected, on
36 the basis of competent medical opinion, to result in serious physical
37 harm.

38 9. "Danger to self":

39 (a) Means behavior that, as a result of a mental disorder:

40 (i) Constitutes a danger of inflicting serious physical harm on
41 oneself, including attempted suicide or the serious threat thereof, if the
42 threat is such that, when considered in the light of its context and in
43 light of the individual's previous acts, it is substantially supportive of
44 an expectation that the threat will be carried out.

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1 (11) Without hospitalization will result in serious physical harm
2 or serious illness to the person.

3 (b) Does not include behavior that establishes only the condition
4 of having a grave disability.

5 10. "Department" means the department of health services.

6 11. "Detention" means the taking into custody of a patient or
7 proposed patient.

8 12. "Director" means the director of the administration.

9 13. "Evaluation" means:

10 (a) A professional multidisciplinary analysis that may include
11 firsthand observations or remote observations by interactive audiovisual
12 media and that is based on data describing the person's identity,
13 biography and medical, psychological and social conditions carried out by
14 a group of persons consisting of not less than AT LEAST the following:

15 (i) Two licensed physicians who are qualified psychiatrists, if
16 possible, or at least experienced in psychiatric matters, and who shall
17 examine and report their findings independently. The person against whom
18 a petition has been filed shall be notified that the person may select one
19 of the physicians. A psychiatric resident in a training program approved
20 by the American medical association or by the American osteopathic
21 association may examine the person in place of one of the psychiatrists if
22 the resident is supervised in the examination and preparation of the
23 affidavit and testimony in court by a qualified psychiatrist appointed to
24 assist in the resident's training, and if the supervising psychiatrist is
25 available for discussion with the attorneys for all parties and for court
26 appearance and testimony if requested by the court or any of the
27 attorneys.

28 (ii) Two other individuals, one of whom, if available, is a
29 psychologist and in any event a social worker familiar with mental health
30 and human services that may be available placement alternatives
31 appropriate for treatment. An evaluation may be conducted on an inpatient
32 basis, an outpatient basis or a combination of both, and every reasonable
33 attempt shall be made to conduct the evaluation in any language preferred
34 by the person.

35 (b) A physical examination that is consistent with the existing
36 standards of care and that is performed by one of the evaluating
37 physicians or by or under the supervision of a physician who is licensed
38 pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner
39 who is licensed pursuant to title 32, chapter 15 if the results of that
40 examination are reviewed or augmented by one of the evaluating physicians.

41 14. "Evaluation agency" means EITHER OF THE FOLLOWING:

42 (a) A health care agency that is licensed by the department AND
43 THAT HAS BEEN APPROVED PURSUANT TO THIS TITLE TO PROVIDE THE SERVICES
44 REQUIRED OF THAT AGENCY BY THIS CHAPTER.

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1 (b) A FACILITY THAT IS EXEMPT FROM LICENSURE PURSUANT TO SECTION
2 36-402, THAT POSSESSES AN ACCREDITATION FROM EITHER A NATIONAL COMMISSION
3 ON CORRECTIONAL HEALTH CARE OR AN AMERICAN CORRECTIONAL ASSOCIATION and
4 that has been approved pursuant to this title, ~~providing those~~ TO PROVIDE
5 THE services required of such agency THAT FACILITY by this chapter.

6 15. "Family member" means a spouse, parent, adult child, adult
7 sibling or other blood relative of a person undergoing treatment or
8 evaluation pursuant to this chapter.

9 16. "Grave disability" means a condition evidenced by behavior in
10 which a person, as a result of a mental disorder, is likely to come to
11 serious physical harm or serious illness because the person is unable to
12 provide for the person's own basic physical needs.

13 17. "Health care decision maker" has the same meaning prescribed in
14 section 12-2801.

15 18. "Health care entity" means a health care provider, the
16 department, the administration or a regional behavioral health authority
17 that is under contract with the administration.

18 19. "Health care provider" means a health care institution as
19 defined in section 36-401 that is licensed as a behavioral health provider
20 pursuant to department rules or a mental health provider.

21 20. "Independent evaluator" means a licensed physician, psychiatric
22 and mental health nurse practitioner or psychologist who is selected by
23 the person to be evaluated or by such person's attorney.

24 21. "Informed consent" means a voluntary decision following
25 presentation of all facts necessary to form the basis of an intelligent
26 consent by the patient or guardian with no minimizing of known dangers of
27 any procedures.

28 22. "Least restrictive treatment alternative" means the treatment
29 plan and setting that infringe in the least possible degree with the
30 patient's right to liberty and that are consistent with providing needed
31 treatment in a safe and humane manner.

32 23. "Licensed physician" means any medical doctor or doctor of
33 osteopathy who is either:

34 (a) Licensed in this state.

35 (b) A full-time hospital physician licensed in another state and
36 serving on the staff of a hospital operated or licensed by the United
37 States government.

38 24. "Medical director of an evaluation agency" means a
39 psychiatrist, or other licensed physician experienced in psychiatric
40 matters, who is designated in writing by the governing body of the agency
41 as the person in charge of the medical services of the agency for the
42 purposes of this chapter and may include the chief medical officer of the
43 state hospital.

44 25. "Medical director of a mental health treatment agency" means a
45 psychiatrist, or other licensed physician experienced in psychiatric

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1 matters, who is designated in writing by the governing body of the agency
2 as the person in charge of the medical services of the agency for the
3 purposes of this chapter and includes the chief medical officer of the
4 state hospital.

5 26. "Mental disorder" means a substantial disorder of the person's
6 emotional processes, thought, cognition or memory. Mental disorder is
7 distinguished from:

8 (a) Conditions that are primarily those of drug abuse, alcoholism
9 or intellectual disability, unless, in addition to one or more of these
10 conditions, the person has a mental disorder.

11 (b) The declining mental abilities that directly accompany
12 impending death.

13 (c) Character and personality disorders characterized by lifelong
14 and deeply ingrained antisocial behavior patterns, including sexual
15 behaviors that are abnormal and prohibited by statute unless the behavior
16 results from a mental disorder.

17 27. "Mental health provider" means any physician or provider of
18 mental health or behavioral health services who is involved in evaluating,
19 caring for, treating or rehabilitating a patient.

20 28. "Mental health treatment agency" means ANY OF THE FOLLOWING:

21 (a) The state hospital. OR

22 (b) A health care agency that is licensed by the department AND
23 THAT PROVIDES THE SERVICES THAT ARE REQUIRED OF THE AGENCY BY THIS
24 CHAPTER.

25 (c) A FACILITY THAT IS EXEMPT FROM LICENSURE PURSUANT TO SECTION
26 36-402, THAT POSSESSES AN ACCREDITATION FROM EITHER A NATIONAL COMMISSION
27 ON CORRECTIONAL HEALTH CARE OR AN AMERICAN CORRECTIONAL ASSOCIATION and
28 that provides those THE services that are required of the agency FACILITY
29 by this chapter.

30 29. "Outpatient treatment" or "combined inpatient and outpatient
31 treatment" means any treatment program not requiring continuous inpatient
32 hospitalization.

33 30. "Outpatient treatment plan" means a treatment plan that does
34 not require continuous inpatient hospitalization.

35 31. "Patient" means any person who is undergoing examination,
36 evaluation or behavioral or mental health treatment under this chapter.

37 32. "Peace officers" means sheriffs of counties, constables,
38 marshals and policemen of cities and towns.

39 33. "Persistent or acute disability" means a severe mental disorder
40 that meets all the following criteria:

41 (a) Significantly impairs judgment, reason, behavior or capacity to
42 recognize reality.

43 (b) If not treated, has a substantial probability of causing the
44 person to suffer or continue to suffer severe and abnormal mental,
45 emotional or physical harm.

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1 (c) Substantially impairs the person's capacity to make an informed
2 decision regarding treatment, and this impairment causes the person to be
3 incapable of understanding and expressing an understanding of the
4 advantages and disadvantages of accepting treatment and understanding and
5 expressing an understanding of the alternatives to the particular
6 treatment offered after the advantages, disadvantages and alternatives are
7 explained to that person.

8 (d) Has a reasonable prospect of being treatable by outpatient,
9 inpatient or combined inpatient and outpatient treatment.

10 34. "Prepetition screening" means the review of each application
11 requesting court-ordered evaluation, including an investigation of facts
12 alleged in the application, an interview with each applicant and an
13 interview, if possible, with the proposed patient. The purpose of the
14 interview with the proposed patient is to assess the problem, explain the
15 application and, when indicated, attempt to persuade the proposed patient
16 to receive, on a voluntary basis, evaluation or other services.

17 35. "Prescribed form" means a form established by a court or the
18 rules of the administration in accordance with the laws of this state.

19 36. "Professional" means a physician who is licensed pursuant to
20 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to
21 title 32, chapter 19.1 or a psychiatric and mental health nurse
22 practitioner who is certified pursuant to title 32, chapter 15.

23 37. "Proposed patient" means a person for whom an application for
24 evaluation has been made or a petition for court-ordered evaluation has
25 been filed.

26 38. "Prosecuting agency" means the county attorney, attorney
27 general or city attorney who applied or petitioned for an evaluation or
28 treatment pursuant to this chapter.

29 39. "Psychiatric and mental health nurse practitioner" means a
30 registered nurse practitioner as defined in section 32-1601 who has
31 completed an adult or family psychiatric and mental health nurse
32 practitioner program and who is certified as an adult or family
33 psychiatric and mental health nurse practitioner by the state board of
34 nursing.

35 40. "Psychiatrist" means a licensed physician who has completed
36 three years of graduate training in psychiatry in a program approved by
37 the American medical association or the American osteopathic association.

38 41. "Psychologist" means a person who is licensed under title 32,
39 chapter 19.1 and who is experienced in the practice of clinical
40 psychology.

41 42. "Records" means all communications that are recorded in any
42 form or medium and that relate to patient examination, evaluation or
43 behavioral or mental health treatment. Records include medical records
44 that are prepared by a health care provider or other providers. Records
45 do not include:

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1 (a) Materials that are prepared in connection with utilization
2 review, peer review or quality assurance activities, including records
3 that a health care provider prepares pursuant to section 36-441, 36-445,
4 36-2402 or 36-2917.

5 (b) Recorded telephone and radio calls to and from a publicly
6 operated emergency dispatch office relating to requests for emergency
7 services or reports of suspected criminal activity.

8 43. "Regional behavioral health authority" has the same meaning
9 prescribed in section 36-3401.

10 44. "Screening agency" means a health care agency that is licensed
11 by the department and that provides those services required of such agency
12 by this chapter.

13 45. "Social worker" means a person who has completed two years of
14 graduate training in social work in a program approved by the council of
15 social work education and who has experience in mental health.

16 46. "State hospital" means the Arizona state hospital.

17 47. "Superintendent" means the superintendent of the state
18 hospital.

APPROVED BY THE GOVERNOR APRIL 18, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2023.

:Ad-dendum - 47

:Ad-dendum - 47

House Engrossed Senate Bill

prisoners; transition services; noncontracted entities

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1091

AN ACT

AMENDING SECTION 31-281, ARIZONA REVISED STATUTES; AMENDING TITLE 31, CHAPTER 2, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 31-283; RELATING TO THE PRISONER TRANSITION PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 31-281, Arizona Revised Statutes, is amended to
3 read:

4 31-281. Transition program; report; definition

5 A. The department shall establish a transition program that
6 provides eligible inmates with transition services in the community for up
7 to ninety days. The department shall administer the transition program
8 and DO BOTH OF THE FOLLOWING:

9 1. Contract with private or nonprofit entities to provide eligible
10 inmates with transition services and shall procure transition services
11 pursuant to title 41, chapter 23.

12 2. AT THE ELECTION OF THE ELIGIBLE INMATE, ALLOW NONCONTRACTED
13 PRIVATE OR NONPROFIT BEHAVIORAL HEALTH SERVICE PROVIDERS THAT MEET THE
14 REQUIREMENTS PRESCRIBED IN SECTION 31-283 TO PROVIDE ELIGIBLE INMATES WITH
15 TRANSITION SERVICES.

16 B. The director shall adopt rules to implement this article. The
17 rules shall include:

18 1. Eligibility criteria for receiving a contracted OR NONCONTRACTED
19 entity's transition services. To be eligible, at a minimum, an inmate
20 shall:

21 (a) Not have been convicted of a sexual offense pursuant to title
22 13, chapter 14 or a violation of title 13, chapter 17.

23 (b) Not have been convicted of a violent crime as defined in
24 section 13-901.03, unless the inmate was convicted of assault, aggravated
25 assault or robbery.

26 (c) Not have any felony detainers.

27 (d) Agree in writing to provide specific information after the
28 inmate is released. The department shall use the information to prepare
29 the report prescribed by subsection D, paragraph 3 of this section.

30 (e) Have made satisfactory progress by complying with all
31 programming on the inmate's individualized corrections plan as determined
32 by the department.

33 (f) Be classified by the department as minimum or medium custody as
34 determined by an objective risk assessment.

35 (g) Not have been found in violation of any major violent rule
36 during the inmate's current period of incarceration or in violation of any
37 other major rule within the previous six months. For the purposes of this
38 subdivision, an accumulation of minor rule violations does not equal a
39 major rule violation.

40 2. A requirement that each contracted AND NONCONTRACTED entity
41 train mentors or certify that mentors are trained.

42 3. A requirement that the services offered to an inmate include
43 psychoeducational counseling and case management services as determined by
44 the department. The counseling and services may include substance abuse
45 treatment, anger management, cognitive behavioral therapy, parenting

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1 skills and family reunification training, further education and job
2 placement.

3 4. A requirement that an inmate may be released pursuant to this
4 article only after the victim has been provided notice and an opportunity
5 to be heard. The department shall provide notice to a victim who has
6 provided a current address or other contact information. The notice shall
7 inform the victim of the opportunity to be heard on the early release.
8 Any objection to the inmate's early release must be made within twenty
9 days after the department has mailed the notice to the victim.

10 5. A REQUIREMENT THAT AN INMATE MUST USE A CONTRACTED ENTITY TO
11 PROVIDE TRANSITION SERVICES UNLESS THE ELIGIBLE INMATE CHOOSES A
12 NONCONTRACTED PRIVATE OR NONPROFIT BEHAVIORAL HEALTH SERVICE PROVIDER TO
13 PROVIDE TRANSITION SERVICES PURSUANT TO SECTION 31-283.

14 C. In awarding contracts under this section the department shall
15 comply with section 41-3751.

16 D. The department shall:

17 1. Conduct an annual study to determine the recidivism rate of
18 inmates who receive a contracted OR NONCONTRACTED entity's services
19 pursuant to this article. The study shall include the recidivism rate of
20 inmates who have been released from incarceration for a minimum of three
21 years after release.

22 2. Evaluate the inmate and provide the information to the
23 contracted entity THAT PROVIDED TRANSITION SERVICES TO THE INMATE.

24 3. Submit a written report to the governor, the president of the
25 senate and the speaker of the house of representatives on or before
26 July 31 of each year and provide a copy of this report to the secretary of
27 state. The report may be submitted electronically. The report shall
28 contain the following information:

29 (a) The recidivism rate of inmates who receive services pursuant to
30 this article, including the recidivism rate of inmates who have been
31 released from incarceration for a minimum of three years after release.

32 (b) The number of inmates who received services pursuant to this
33 article.

34 (c) The number of inmates who were not provided services pursuant
35 to this article and who were on a list waiting to receive services.

36 (d) The types of services provided.

37 (e) The number of inmates who received each type of service
38 provided.

39 4. Provide information about the transition program to all inmates
40 who are not serving a life sentence on admission to prison and to any
41 inmate who is potentially eligible for the transition program six months
42 before the inmate's eligibility date. The information must include all of
43 the admission requirements to the transition program, including the
44 disqualifying factors under this section.

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1 E. Notwithstanding subsection B, paragraph 1 of this section, if an
2 inmate agrees to comply with any condition that is established and
3 required by section 41-1604.07, subsection F, has been convicted of the
4 possession or use of marijuana pursuant to section 13-3405, subsection A,
5 paragraph 1, possession or use of a dangerous drug pursuant to section
6 13-3407, subsection A, paragraph 1, possession or use of a narcotic drug
7 pursuant to section 13-3408, subsection A, paragraph 1 or possession or
8 use of drug paraphernalia pursuant to section 13-3415, subsection A and is
9 not concurrently serving another sentence for an offense that is not
10 listed in this subsection, the inmate is eligible for and shall be
11 released to enter the transition program. The director may not exclude an
12 inmate who is eligible for the transition program pursuant to this
13 subsection because the inmate does not have a place to reside before being
14 released, except that the director shall exclude an inmate who has any of
15 the following:

16 1. Previously been convicted of a violent crime as defined in
17 section 13-901.03 or an offense listed in title 13, chapter 14 or 35.1.

18 2. A felony detainer.

19 3. Been found to be in violation of a major violent rule during the
20 inmate's current period of incarceration or to be in violation of any
21 other major rule within the previous six months. For the purposes of this
22 paragraph, an accumulation of minor rule violations does not equal a major
23 rule violation.

24 4. Previously been released pursuant to this section and violated a
25 term of the inmate's release.

26 5. Failed to achieve functional literacy as required by section
27 41-1604.07, subsection F, unless the inmate is enrolled in a program that
28 prepares the inmate to achieve functional literacy.

29 6. Been classified by the department as close or maximum custody as
30 determined by a current and objective risk assessment.

31 7. Refused enrollment in or been removed for poor behavior from a
32 major self-improvement program within the previous eighteen months unless
33 the inmate has subsequently enrolled in and completed the major
34 self-improvement program.

35 F. For the purposes of this section, "recidivism" means
36 reincarceration in the department for any reason.

37 Sec. 2. Title 31, chapter 2, article 6, Arizona Revised Statutes,
38 is amended by adding section 31-283, to read:

39 31-283. Noncontracted behavioral health service providers:
40 definition

41 A. THE DEPARTMENT SHALL ALLOW AN ELIGIBLE PERSON TO CHOOSE TO
42 RECEIVE TRANSITION SERVICES FROM A PRIVATE OR NONPROFIT BEHAVIORAL HEALTH
43 SERVICE PROVIDER THAT IS NOT CONTRACTED WITH THE DEPARTMENT PURSUANT TO
44 SECTION 31-282 IF THE PRIVATE OR NONPROFIT BEHAVIORAL HEALTH SERVICE

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1 PROVIDER HAS A SERVICE CAPACITY OF AT LEAST TWO HUNDRED INDIVIDUALS AND
2 AGREES TO DO ALL OF THE FOLLOWING:

- 3 1. PROVIDE TRANSITION SERVICES TO AN ELIGIBLE PERSON.
- 4 2. BE LICENSED BY THE DEPARTMENT OF HEALTH SERVICES.
- 5 3. TRAIN MENTORS OR CERTIFY THAT MENTORS ARE TRAINED.
- 6 4. PROVIDE CASE MANAGEMENT AND INREACH TO AN ELIGIBLE PERSON BEFORE
7 THE PERSON BECOMES ELIGIBLE FOR TRANSITION SERVICES.

8 5. PROVIDE SERVICES TO AN ELIGIBLE PERSON THAT INCLUDE
9 PSYCHOEDUCATIONAL COUNSELING AND CASE MANAGEMENT SERVICES. THE COUNSELING
10 AND SERVICES MAY INCLUDE SUBSTANCE ABUSE TREATMENT, ANGER MANAGEMENT,
11 COGNITIVE BEHAVIORAL THERAPY, PSYCHOSOCIAL REHABILITATION SERVICES,
12 PARENTING SKILLS AND FAMILY REUNIFICATION TRAINING, FURTHER EDUCATION AND
13 JOB PLACEMENT. THE BEHAVIORAL HEALTH SERVICE PROVIDER SHALL ALSO PROVIDE:

14 (a) EMPLOYMENT, EMPLOYMENT ASSISTANCE AND CAREER COUNSELING
15 SERVICES.

16 (b) BASIC ACADEMIC EDUCATION, GENERAL EQUIVALENCY DIPLOMA
17 PREPARATION AND POSTSECONDARY EDUCATION JOB TRAINING.

18 (c) TRANSITIONAL NEEDS, INCLUDING HOUSING, FOOD OR TREATMENT
19 SERVICES.

20 (d) ASSISTANCE IN FINDING HEALTH INSURANCE COVERAGE FOR THE
21 ELIGIBLE PERSON AND, IF APPLICABLE, MEDICAL ASSISTANCE, INCLUDING
22 ASSISTANCE IN FINDING NECESSARY MEDICATION.

23 6. PROVIDE PHYSICAL HEALTH AND WELLNESS EDUCATION AND SERVICES.

24 7. PROVIDE INFORMATION TO THE DEPARTMENT TO ALLOW THE DEPARTMENT TO
25 CONDUCT ITS ANNUAL STUDY TO DETERMINE THE RECIDIVISM RATE OF ELIGIBLE
26 PERSONS WHO RECEIVE TRANSITION SERVICES.

27 B. IF THE DEPARTMENT DETERMINES THAT A PRIVATE OR NONPROFIT
28 BEHAVIORAL HEALTH SERVICE PROVIDER THAT IS NOT CONTRACTED WITH THE
29 DEPARTMENT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION, THE PRIVATE OR
30 NONPROFIT BEHAVIORAL HEALTH SERVICE PROVIDER SHALL BE GIVEN THE
31 OPPORTUNITY TO COMPLY WITH THIS SECTION. IF THE PRIVATE OR NONPROFIT
32 BEHAVIORAL HEALTH SERVICE PROVIDER THAT IS NOT CONTRACTED WITH THE
33 DEPARTMENT DOES NOT COME INTO COMPLIANCE, THE DEPARTMENT SHALL REQUIRE THE
34 ELIGIBLE PERSON TO RECEIVE TRANSITION SERVICES FROM A PRIVATE OR NONPROFIT
35 ENTITY THAT IS CONTRACTED WITH THE DEPARTMENT PURSUANT TO SECTION 31-282.

36 C. FOR THE PURPOSES OF THIS SECTION, "ELIGIBLE PERSON" MEANS AN
37 INMATE WHO IS ELIGIBLE TO RECEIVE TRANSITION SERVICES BASED ON THE
38 INMATE'S RISK AND NEED AS DETERMINED BY THE DIRECTOR PURSUANT TO SECTION
39 31-281.